

October 27, 1997

MEMORANDUM TO: Distribution

FROM: Michael J. Rubino, Associate Director
Acquisition Services Branch

SUBJECT: Policy Memorandum 97- 015, Contractor Conflicts of
Interest Regulation

1. Purpose. The purpose of Policy Memorandum No. 97-015 is to clarify that the FDIC Contractor Conflicts of Interest Regulation, 12 CFR part 366, does not apply when contracting for goods.
2. Reference. APM 1.E.3., *Contractor Conflicts of Interest*, page 1-22.
APM 8.F., *Contractor Conflicts of Interest, Eligibility, and Waiver Procedures*, page 8-21.
3. Scope. This Policy Memorandum is applicable to all Contracting Officers and Acquisition Services Branch (ASB) personnel involved in developing and issuing solicitations and awarding contracts.
4. Background.

The FDIC Contractor Conflicts of Interest Regulation establishes minimum standards of competence, experience, integrity, and fitness for independent contractors and outlines the provisions governing conflicts of interest, ethical responsibilities, and the use of confidential information. The Regulation is incorporated in the Acquisition Policy Manual (APM) and used in FDIC's Standard Contract documents.

The scope of the Regulation, 12 CFR ' 366.1(c)(1), states that it applies to contractors, including law firms, which "submit offers to provide services to the FDIC or which enter into contracts for services with the FDIC." Even though the Regulation applies to services only, the APM established a broader application to contracts for services and contracts for goods. This Policy Memorandum changes the APM to make it consistent with the scope of the Regulation (i.e., applying only to contracts for services). **Notwithstanding, this change does not relieve Contracting Officers from awarding contracts to contractors that are experienced, competent and have the financial resources to perform their contractual requirements. Contracting Officers are to check the National Contractor System prior to award to ensure an awardee does not have any disqualifying conditions.**

5. APM Change. Therefore, this Policy Memorandum revises the APM as follows:

- a. APM 1.E.3.b., **Applicable Regulation**, is deleted in its entirety and is restated as follows:

1.E.3.b. **Applicable Regulation**. Requirements for minimum standards and procedures for ensuring that contractors meet minimum standards of competence, experience, integrity and fitness are defined in the Contractor Conflicts of Interest Regulation (12 CFR part 366). As stated in the Regulation, part 366.1(c), *Scope*, these eligibility requirements apply to contractors which submit proposals for services or which enter into contracts for services with FDIC. When services are being procured, the Contracting Officer shall ensure that the FDIC Eligibility Representations and Certifications Form is included in the Request for Proposal and completed by all firms submitting proposals for services. **Contractors which submit proposals for goods or which enter into contracts for goods with the FDIC are not subject to the Regulation. However, these contracts may still be subject to Background Investigations in accordance with APM 5.B.9., Background Investigations Reviews and fingerprinting of all contractor personnel required to work on-site in an FDIC Office.**

Note: When a contract is primarily for goods but requires incidental services (e.g., technical support for computers, installation for systems furniture, or set-up for fax machines), the contractor shall not be subject to the Regulation and it is not necessary or required to include the FDIC Eligibility Representations and Certifications Form in the Request for Proposal. If there is any doubt as to whether the Regulation applies to a procurement, the Contracting Officer shall refer the matter to the Policy Development and Compliance Section, ASB, for coordination with the Ethics Section, Office of the Executive Secretary.

- b. APM 3.G.5.a., *Regulation*, is deleted in its entirety and restated as follows:

3.G.5.a. *Regulation*. On April 10, 1996, 12 CFR Part 366, Contractor Conflicts of Interest became effective. This regulation requires contractors to submit information, both with their proposal and subsequently, which bears on their ethical fitness to do work for FDIC. The regulation applies to FDIC contractors and subcontractors that submit offers to provide services to the FDIC or which enter into contracts for services with the FDIC. For purposes of policy, the FDIC's contractor is responsible for ensuring that first tier subcontractors are in compliance with the regulation.

- c. APM 8.F.1., ***Policy***, is deleted in its entirety and is restated (to add the reference to services) as follows:

8.F.1. ***Policy***. The FDIC will not award contracts *for services* to contractors that have disqualifying conditions or conflicts of interest associated with a particular contract or permit contractors to continue performance with such conflicts or conditions unless such conflicts or conditions are waived by FDIC or are eliminated by the contractor.

- d. APM 8.F.1.c., ***Exclusions***, is deleted in its entirety and is restated as follows:

8.F.1.c. ***Exclusions***.

- (1) These limits and requirements do not apply when the FDIC is acting as a conservator of a failed financial institution or when operating a bridge bank.
- (2) These limits and requirements do not apply to contracts for the acquisition of goods. The fact that a contract for the acquisition of goods may also include incidental services would not subject the contractor to these limits and requirements. Incidental services may include technical support, installation, and set-up services that are generally available to purchasers of similar goods.

6. Effective Date. This Policy Memorandum is effective immediately.

7. Contacts. If you have any questions regarding this Policy Memorandum, please call David McDermott on (202) 942-3434.

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